



# **Title VI – Domestic Relations and Probate Code**

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## **Alabama-Coushatta Tribe of Texas Comprehensive Codes of Justice**

**Adopted and Codified as Title VI- Domestic Relations and Probate Code of the A-C,  
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*Title VI- Domestic Relations and Probate Code is comprised of all Tribal statutes relevant to domestic relation matters and probate of Tribal member estates.*

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**Title VI – Domestic Relations and Probate Code/C.C.J.****CHAPTER I. DOMESTIC RELATIONS****Sec. 101 Marriages**

- (A) Judges of the Court shall have the authority to perform marriages.
- (B) A valid marriage shall be between a man and a woman licensed, solemnized, and registered as provided herein.

**Sec. 102 Marriage Licenses**

A marriage license shall be issued by the Clerk of the Court in the absence of any showing that the proposed marriage would be invalid under any provision of this part or tribal custom, and upon written application of an unmarried male and unmarried female, both of whom must be eighteen (18) years or older. If either party to the marriage is under the age of eighteen (18), that party must have the written consent of a custodial parent or of the party's legal guardian who has custody.

- (A) The issuance of a marriage license by the Clerk of the Court and by execution of a consent to marriage by both parties to the marriage and recorded with the clerk of the court; or
- (B) A marriage license application shall include the following information:
  - (1) Name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;
  - (2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;
  - (3) Name and address of the parents or guardian of each party;
  - (4) Whether the parties are related to each other and, if so, their relationship; and
  - (5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.
  - (6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State of Texas.

**Sec. 103 Solemnization**

- (A) In the event a judge, ordained clergyman, or anyone authorized to do so solemnizes a marriage, he or she shall file with the Clerk of the Court certification thereof within thirty (30) days of the solemnization.

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(B) Upon receipt of the marriage certificate, the clerk of the court shall register the marriage.

**Sec. 104      Invalid or Prohibited Marriages**

(A) The following marriages are prohibited:

- (1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;
- (2) A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood;
- (3) A marriage between an aunt and a nephew or between an uncle and a niece, whether the relationship is by the half or the whole blood, except as to marriages permitted by established tribal custom;
- (4) A marriage prohibited by custom and usage of the Tribe.

(B) Children born of a prohibited marriage are legitimate.

**Sec. 105      Declaration of Invalidity**

(A) The Court shall enter a decree declaring the invalidity of a marriage entered into under the following circumstances:

- (1) A party lacked capacity to consent to the marriage, either because of mental incapacity or infirmity or by the influence of alcohol, drugs, or other incapacitating substances; or
- (2) A party was induced to enter into a marriage by fraud or duress; or
- (3) A party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into, the other party did not know of the incapacity; or
- (4) The marriage is invalid or prohibited as provided under this code.

(B) A declaration of invalidity may be sought by either party to the marriage or by the legal representative of the party who lacked capacity to consent within ninety (90) days of certification of the solemnization by the Clerk of the Court.

**Sec. 106      Dissolution**

(A) The Court shall enter a decree of dissolution of marriage if it finds all of the following:

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- (1) The Court finds that the marriage is irretrievably broken, if the finding is supported by evidence that:
  - (A) The parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of the proceeding, or
  - (B) There is serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage;
- (2) The Court finds that either party, at the time the action was commenced, was domiciled on the Tribe's reservation and that the domicile has been maintained for ninety (90) days next preceding the making of the findings; and
- (3) To the extent it has jurisdiction to do so, the Court has considered, approved, or provided for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or has provided for a separate later hearing to complete these matters.

(B) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the Court shall grant the decree in that form unless the other party objects.

**Sec. 107      Dissolution Proceedings**

- (A) Either or both parties to the marriage may initiate dissolution proceedings.
- (B) If a proceeding is commenced by one of the parties, the other party shall be served in the manner provided by the applicable rule of civil procedure and within thirty (30) days after the date of service may file a verified response.
- (C) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:
  - (1) The age, occupation, and length of residence within the Tribe's reservation of each party;
  - (2) The date of the marriage and the place at which it was registered;
  - (3) That jurisdictional requirements are met and that the marriage is irretrievably broken in that either:
    - (a) The parties have lived separate and apart for a period of more than one hundred eighty (180) days preceding the commencement of the proceeding, or
    - (b) There is a serious marital discord adversely affecting the attitude of one or both of the parties toward the

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marriage, and there is no reasonable prospect of reconciliation;

- (4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;
- (5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and
- (6) The relief sought.

**Sec. 108 Temporary Orders and Temporary Injunctions**

(A) In a proceeding for dissolution of marriage or for legal separation, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(B) As a part of a motion for temporary maintenance or support or by an independent motion accompanied by an affidavit, either party may request the Court to issue a temporary injunction for any of the following relief:

- (1) Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;
- (2) Enjoining a party from molesting or disturbing the peace of the other party or of any child;
- (3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;
- (4) Enjoining a party from removing a child from the jurisdiction of the court; and
- (5) Providing other injunctive relief proper in the circumstances.

(C) The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(D) A response may be filed within twenty (20) days after service of notice of a motion or at the time specified in the temporary restraining order.

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**(E)** On the basis of the showing made, the Court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper under the circumstances.

**(F)** A temporary order or temporary injunction:

- (1)** Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in a proceeding;
- (2)** May be revoked or modified before the final decree as deemed necessary by the Court;
- (3)** Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

**Sec. 109 Final Decree, Disposition of Property, Maintenance, Child Support, Custody**

**(A)** A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal.

**(B)** The Court shall have the power to impose judgment as follows in dissolution or separation proceedings:

- (1)** Apportion or assign between the parties the non-trust property and non-trust assets belonging to either or both and whenever acquired, and whether the title thereto is in the name of the husband or wife or both;
- (2)** Grant a maintenance order for either spouse in amounts and for periods of time the Court deems just in accordance with Sec. 403 of the Alabama Coushatta Child Support Enforcement Code;
- (3)** Order the non-custodial parent to pay the custodial party who is responsible for care and maintenance of that child an amount reasonable or necessary for the child's support, provided said support is consistent with the Alabama Coushatta Tribe of Texas' Child Support Codes and guidelines, without regard to marital misconduct, after considering all relevant factors. In addition:

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- (a) In a manner consistent with the Alabama-Coushatta Child Support Enforcement Code, when a support order is issued by a Court, the order may provide that a portion of an absent parent's wages be withheld to comply with the order on the earliest of the following dates: When an amount equal to one month's support becomes overdue; when the absent parent requests withholding; or at such time as the Court selects. The amount to be withheld may include an amount to be applied toward liquidation of any overdue support.
- (4) Make child custody determination in accordance with the best interest of the child as defined in Section 105(g) of the Children's Code.
- (5) Restore the maiden name of the wife at the request of the wife.

**Sec. 110 Determination of Paternity and Support**

The Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Court.

**Sec. 111 Personal Protection Orders / Injunctions Restricting Activity**

(A) By commencing an independent action to obtain relief under this Section, an individual may petition the Tribal Court to restrain or enjoin a family member, household member, a former spouse, an individual with whom he or she has had a child in common, or an individual with whom the victim has had a dating relationship from doing one or more of the following:

- (1) Entering a specific premises
  - (2) Directly or indirectly contacting a named person
  - (3) Appearing at the workplace or residence of a named individual
  - (4) Engaging in domestic violence against a named individual.
  - (5) Possessing any firearms or other known dangerous weapons.
- (B) The Petition must allege facts sufficient to show the following
- (1) The name and residence of the petitioner and that the petitioner is the alleged victim.
  - (2) The name and residence of the respondent.
  - (3) An indication of which of the parties is an Indian, and of the tribe in which that person is enrolled, if any.
  - (4) The relationship between the petitioner and respondent.



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- (5) That the respondent engaged in, or, based on prior conduct of the petitioner and the respondent, may engage in domestic violence or otherwise cause imminent physical harm, bodily injury, assault or sexual assault of the petitioner.
- (6) Whether the petitioner and respondent were parties to a previous protective order that has expired. If so, the petitioner shall attach a copy of the order to the petition or agree to have a copy sent to the Court before the initial Court date.

**(C)** If the petitioner submits to the judge a petition alleging the elements set forth under 111(B) and the judge finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct may engage in domestic violence or otherwise cause the petitioner imminent physical harm, bodily injury, assault or sexual assault, a judge shall issue ex-parte a personal protection order ordering any of the relief available in Sec. 111(A)(1)-(5). A personal protection order issued ex-parte that is unchallenged by the respondent may remain in effect for up to 1 year. Any individual affected by a temporary ex-parte protective order may challenge the order by filing a motion to vacate the order. Once a motion to vacate has been filed, the court shall schedule and conduct a hearing as soon as possible to determine if there is a high degree of likelihood that the respondent may engage in domestic violence or otherwise cause physical harm, assault or sexual assault to the petitioner. If so found, the court shall issue a personal protection order restraining any of the activity found in Section 111(A)(1)-(4) for up to two years. If the court does not find a high degree of likelihood, it shall dismiss its ex-parte order.

**(D)** If the petitioner submits to the judge a petition alleging the elements set forth under 111(B) and the judge does not issue an ex-parte order under Section 111(C), a hearing must be set no later than 15 days from filing of the petition and the respondent must be served at least 48 hours before the scheduled hearing. At the hearing, the Judge shall issue a personal protection order restraining any of the activity found in Section 111(A)(1)-(4) if he/she finds that respondent has engaged in, or based upon prior conduct a high degree of likelihood that the respondent may engage in domestic violence or otherwise cause physical harm, assault or sexual assault to the petitioner. An Order issued after a hearing may be effective according to its terms for no more than two years. A respondent may respond to a petition either in writing before or at a hearing on the issuance of the injunction/ protective order or orally at a hearing.<sup>1</sup>

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<sup>1</sup> Sec. 111 added on May 17, 2016, by Tribal Resolution #2016-23

**Title VI – Domestic Relations and Probate Code/C.C.J.****CHAPTER II.        PROBATE****Sec. 201        Probate Jurisdiction**

The Court shall have jurisdiction to administer in probate the estate of a deceased Tribal member who, at the time of his or her death, was domiciled or owned personal property situated within the Tribe's reservation.

**Sec. 202        Duty to Present Will for Probate**

Any custodian of a will shall deliver the same to the Court within thirty (30) days after receipt of information that the maker thereof is deceased. Any custodian who fails to do so shall be liable for damages sustained by any person injured thereby.

**Sec. 203        Proving and Admitting Will**

(A) Upon initiating the probate of an estate, the will of the decedent shall be filed with the Court. Such will may be proven and admitted to probate by filing an affidavit of an attesting witness which identifies such will as being the will which the decedent executed and declared to be his or her last will. If the evidence of none of the attesting witnesses is available, the Court may allow proof of the will by testimony that the signature of the testator is genuine.

(B) At any time within 90 days after a will has been admitted to probate, any person having an interest in the decedent's estate may contest the validity of such will. In the event of such contest, a hearing shall be held to determine the validity of such will.

(C) Upon considering all relevant information concerning the will, the Court shall enter an order affirming the admission of such will to probate, or rejecting such will and ordering that the probate of the decedent's estate proceed as if the decedent had died intestate.

**Sec. 204        Petition and Order to Probate Estate**

(A) Any person having an interest in the administration of an estate which is subject to the jurisdiction of the Court may file a written petition with the Court requesting that such estate be administered in probate.

(B) The Court shall enter an order directing that the estate be probated upon finding that the decedent was a Tribal member who, at the time of his or her death, was domiciled or owned personal property situated within the Indian country under the jurisdiction of the court other than trust or other restricted property, that the decedent left an estate subject to the jurisdiction of the court, and that it is necessary to probate such estate.

**Title VI – Domestic Relations and Probate Code/C.C.J.****Sec. 205      Appointment and Duties of Executor or Administrator**

(A) Upon ordering the estate to be probated, the Court shall appoint an executor or administrator to administer the estate of the decedent. The person nominated by the decedent's will, if any, to be the executor of the estate shall be so appointed, provided such person is willing to serve in such capacity.

(B) The executor or administrator appointed by the Court shall have the following duties and powers during the administration of the estate and until discharged by the Court:

- (1) To send by certified mail true copies of the order to probate the estate and the will of the decedent admitted to probate by such order, if any, to each heir, devisee and legatee of the decedent, at their last known address, to the Tribe's governing body;
- (2) To preserve and protect the decedent's property within the estate and the heirs, so far as is possible;
- (3) To investigate promptly all claims against the decedent's estate and determine their validity;
- (4) To cause a written inventory of all the decedent's property within the estate to be prepared promptly with each article or item being separately set forth and cause such property to be exhibited to and appraised by an appraiser, and the inventory and appraisal thereof to be filed with the Court;
- (5) To give promptly all persons entitled thereto such notice as is required under these proceedings;
- (6) To account for all property within the estate which may come into his or her possession or control, and to maintain accurate records of all income received and disbursements made during the course of the administration.

**Sec. 206      Removal of Executor or Administrator**

The Court may order the executor or administrator to show cause why he or she should not be discharged, and may discharge the executor or administrator for failure, neglect or improper performance of his or her duties.

**Sec. 207      Appointment and Duties of Appraiser**

(A) Upon ordering an estate to be probated, the court shall appoint a disinterested and competent person as an appraiser to appraise all of the decedent's personal property within the estate.

(B) It shall be the duty of the appraiser to appraise separately the true cash value of each article or item of property within the estate, including debts due the decedent, and

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to indicate the appraised value of each such article or item of property set forth in the inventory of the estate and to certify such appraisal by subscribing his or her name to the inventory and appraisal.

**Sec. 208      Claims Against Estate**

(A) Creditors of the estate or those having a claim against the decedent shall file their claim with the Clerk of the Court or with the executor or administrator within sixty (60) days from official notice of the appointment of the executor or administrator published locally in the press or posting of signs at the tribal and agency offices, giving appropriate notice for the filing of claims.

(B) The executor or administrator shall examine all claims within 90 days of his or her appointment and notify the claimant whether his or her claim is accepted or rejected. If the claimant is notified of rejection, he or she may request a hearing before the Court by filing a petition requesting such hearing within thirty (30) days following the notice of rejection.

**Sec. 209      Sale of Property**

After filing the inventory and appraisal, the executor or administrator may petition the Court for authority to sell personal property of the estate for purposes of paying the expenses of last illness and burial expenses, expenses of administration, claims, if any, against the estate, and for the purpose of distribution. If, in the Court's judgment, such sale is in the best interest of the estate, the Court shall order such sale and prescribe the terms upon which the property shall be sold.

**Sec. 210      Final Accounting**

(A) When the affairs of an estate have been fully administered, the executor or administrator shall file a final accounting with the Court, verified by his or her oath. Such final accounting shall affirmatively set forth:

- (1) That all claims against the estate have been paid, except as shown, and that the estate has adequate unexpended and unappropriated funds to fully pay such remaining claims;
- (2) The amount of money received and expended by him or her, from whom received and to whom paid, referring to the vouchers for each of such payments;
- (3) That there is nothing further to be done in the administration of the estate except as shown in the final account;
- (4) The remaining assets of the estate, including unexpended and unappropriated money, at the time of filing the final account;

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- (5) The proposed determination of heirs and indicate the names, ages, addresses and relationship to the decedent of each distributee and the proposed distributive share and value thereof each heir, devisee or legatee is to receive; and
- (6) A petition that the Court set a date for conducting a hearing to approve the final accounting, to determine the heirs, devisees and legatees of the decedent and the distributive share each distributee is to receive.

**Sec. 211     Determination of the Court**

At the time set for hearing upon the final accounting, the Court shall proceed to examine all evidence relating to the distribution of the decedent's estate, and consider objections to the final accounting which may have been filed by any heir, devisee, legatee, or other person having an interest in the distribution of the estate. Upon conclusion of the hearing, the Court shall enter an order:

- (1) Providing for payment of approved claims;
- (2) Determining the decedent's heirs, devisees and legatees, indicating the names, ages and addresses of each, and the distributive share of the remaining estate which each distributee is to receive; and
- (3) Directing the administrator or executor to distribute such distributive share to those entitled thereto.

**Sec. 212     Descent and Distribution**

(A) The Court shall distribute the estate according to the terms of the will of the decedent which has been admitted to probate.

(B) If the decedent died intestate or having left a will which has been rejected by the Court, the estate shall be distributed as follows:

- (1) First, to the spouse of the decedent, if living;
- (2) Second, if the decedent has any children, then in equal shares among the children of the decedent; and for any deceased child, that child's share will be distributed equally among that child's children (grandchildren of the decedent). A deceased child without children does not receive a distribution of the decedent's estate;
- (3) Third, equally between any living parents of the decedent; and
- (4) Fourth, equally between any living brothers or sisters of the decedent.

(C) If no person takes under the above subsections, the estate shall escheat to the Tribe.

**Title VI – Domestic Relations and Probate Code/C.C.J.****Sec. 213      Closing Estate**

**(A)** Upon finding that the estate has been fully administered and is in a condition to be closed, the Court shall enter an order closing the estate and discharging the executor or administrator.

**(B)** If an order closing the estate has not been entered by the end of nine months following appointment of executor or administrator, the executor or administrator shall file a written report with the Court stating the reasons why the estate has not been closed.

**Sec. 214      Small Estates**

**(A)** An estate having an appraised value which does not exceed \$50,000.00 may, upon affidavit of the claiming successors, and a hearing before the Court, be distributed without administration to those entitled thereto, upon which the estate shall be closed.

**(B)** A person is a “claiming successor” for purposes of this section, if, the decedent died with a will, and that person is a devisee of the will; the decedent died without a will, and that person is an heir of the estate as defined in Section 2.12(b).